

STATE CONTROLLER POLICY

State Contract Modifications

(Other Than Capital Construction Contracts)

A policy outlining the use and format of state contract modification tools for state agencies and institutions.

Background

CRS 24-30-202 authorizes the State Controller to prescribe the form of all commitment vouchers. This policy contains required contract language and specific contract modification forms required by the State Controller to be used in state contracts and sets the parameters for their use. The State Controller must approve any other contract modification form prior to its use by a state agency. In addition, all contract modification forms to be used in conjunction with the state contract must be included as an exhibit to the contract, except for amendments.

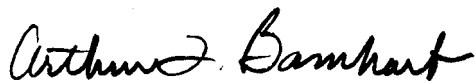
Policy

The approved contract modifications forms are: Contract Amendments, Options, Change Order Letters, Task Orders, and Funding Letters. These contract modifications were developed for specific types of contracts and scopes of services and contain very specific language. These contract modifications are not universal. They should not be included in all contracts, nor should they be changed or combined with other contract modifications, except amendments, or be used for other than their intended purpose. **These forms may only be used when an agency is in full compliance with all statutes and rules governing that contract, especially state procurement rules and review for personal services by the Human Resources Division.**

With the exception of contract amendments, once the State Controller or a delegate has executed a state contract containing one or more of these contract modifications attached as exhibits, the contract modification may be executed without further legal review by the State Attorney General or designate.

State agencies may use a contract amendment or other modification form in a manner consistent with the uses described in this policy. If a state agency has a need to use one of these forms in a manner not described in this policy, they must first contact the Contract Unit in the State Controller's Office to discuss the use of the form and receive written approval prior to its use.

Questions concerning this policy or any question of a general nature concerning contracting should be directed to the State Contracting Unit in the State Controller's Office. Questions concerning the legal sufficiency of any contract should be directed to the Office of the Attorney General or the designated Special Assistant Attorney General for your state agency or institution.



Arthur L. Barnhart
State Controller

STATE CONTROLLER POLICY

Definitions:

Unilateral - Means that the document must be signed by only one party to the contract

Bilateral - Means that all parties to the contract must sign the document.

Amendment – A bilateral contracting document that can be used to modify any provision in a contract.

Option – A unilateral contracting document that allows a state agency to extend the term of a contract and/or increase or decrease the amount of goods, level of service, or contract value based on prices established in the contract.

Change Order Letter – A bilateral contracting document that allows a state agency to make changes to specifications for the work and to adjust the price and/or term of the contract based upon those changes.

Task Order – A bilateral contracting document that allows a state agency to negotiate with a vendor already under contract to do a specific job based on rates established in the contract.

Funding Letter – A unilateral contracting document that allows a state agency to increase or decrease the amount of funding for a specific sub-grantee based upon the funding available to the state agency.

Scope of Work - The scope of the contract is defined as all work that was fairly and reasonably within the contemplation of the parties at the time the contract was made. The scope of the contract also serves as a basis for writing the Statement of Work. The Statement of Work is the portion of the contract that describes the actual work to be done by the contractor by means of the specifications, quantities, performance dates, quality, time of performance, etc.

STATE CONTROLLER POLICY

Contract Amendments

Purpose:

Contract amendments may be used to change, add, or delete any provision or term in a state contract and may be used in lieu of any other contract modification form. Amendments must be executed and approved prior to the end of the contract term and are always bilateral. For example:

During the term of the contract the state agency identifies an additional scope of work that is needed. A contract amendment must be processed to add the additional work and increase the total contract value.

The term of a state contract ends on April 15th but the contractor has not finished the work because of the weather and the state agency wants to give the contractor additional time to complete the work. A contract amendment must be processed before the contract term expires to extend the term of the contract.

A state agency has included the option to renew language in a state contract and wishes to exercise that option for another year. At the same time the scope of work is to be expanded and increased funding is required for the additional work. An amendment may be processed before the contract term expires to extend the term of the contract, add the additional work and increase the amount of the contract. An amendment is required in this situation because an option cannot be used to change the scope of work.

Requirements:

There is no specific language that needs to be included in a contract in order for a state agency to use a contract amendment to modify a contract. However, language may not be included in a state contract that allows the parties to amend a contract by agreement of the parties, by letter, or any other means other than a formal amendment.

All contract amendments require the same reviews, approvals and signatures as the contracts that they are amending. Contract amendments used only to extend the term of the state contract and that are processed prior to the end of the original contract term do not require legal review.

A contract amendment may be processed at any time during the term of the contract.

Agency or Department
Name

Department or Agency
Number

Contract Routing Number

[SAMPLE]

CONTRACT AMENDMENT # _____

THIS AMENDMENT, made this _____ day of _____ 20__, by and between the State of Colorado for the use and benefit of the Department of /or Higher Education Institution (name and mailing address here) hereinafter referred to as the State, and (name and address of contracting entity), hereinafter referred to as the Contractor.

FACTUAL RECITALS

Authority exists in the Law and Funds have been budgeted, appropriated, and otherwise made available and a sufficient unencumbered balance thereof remains available for payment; and

Required approval, clearance, and coordination has been accomplished from and with appropriate agencies; and

The parties entered into a contract dated (made date), for (short description of original contract's purpose). The purpose for this amendment is described below.

(Brief statement of facts/reasons for the amendment.)

(Brief statement of intention in amending the contract.)

NOW THEREFORE, it is hereby agreed that

1. Consideration for this amendment to the original contract, (contract routing number), (original contract encumbrance number), dated (made date) consists of the payments which shall be made pursuant to this amendment and the promises and agreements herein set forth.
2. It is expressly agreed by the parties that this amendment is supplemental to the original Contract, **as amended (previous amendment routing number), collectively***, referred to as the "original contract," which is, by this reference incorporated herein, that all terms, conditions, and provisions thereof, unless specifically modified herein, are to apply to this amendment as though they were expressly rewritten, incorporated, and included herein.
(*Note: only use this language if creating amendment # 2 or higher)
3. It is agreed the original contract is and shall be modified, altered, and changed in the following respects only:
 - a.
 - b.
4. The effective date of this amendment is upon approval of the State Controller or (date), 20__, whichever is later.

5. Except for the "Special Provisions," in the event of any conflict, inconsistency, variance, or contradiction between the provisions of this amendment and any of the provisions of the original contract, the provisions of this amendment shall in all respects supersede, govern, and control. The "Special Provisions" shall always be controlling over other provisions in the contract or amendments. The representations in the Special Provisions concerning the absence of bribery or corrupt influences and personal interest of State employees are presently reaffirmed.
6. FINANCIAL OBLIGATIONS OF THE STATE PAYABLE AFTER THE CURRENT FISCAL YEAR ARE CONTINGENT UPON FUNDS FOR THAT PURPOSE BEING APPROPRIATED, BUDGETED, AND OTHERWISE MADE AVAILABLE.

IN WITNESS WHEREOF, the parties hereto have executed this amendment on the day first above written.

Contractor:

State of Colorado

Bill Owens, Governor

(Full Legal Name)

(Signature of Individual)

(Name of Individual)

Position (Title)

By: _____
Executive Director or College President

(Department of or Higher Ed. Institution)
Date: _____

Attorney General, Ken Salazar

By: _____
Date: _____

Social Security Number
or Federal Employer ID Number

Attestation:

(SEAL)

By: _____
Corporate Secretary,
or Equivalent,
Town/City/County Clerk

ALL CONTRACTS MUST BE APPROVED BY THE STATE CONTROLLER

CRS 24-30-202 requires that the State Controller approve all state contracts. This contract is not valid until the State Controller, or such assistant as he may delegate, has signed it. The contractor is not authorized to begin performance until the contract is signed and dated below. If performance begins prior to the date below, the State of Colorado may not be obligated to pay for goods and/or services provided.

**State Controller
Arthur L. Barnhart**

By: _____

Date: _____

Date Issued: February 10, 2003

STATE CONTROLLER POLICY

Contract Options

Purpose

Contract options may be used for the following purposes.

- 1. To extend the original term and all conditions of a state contract for a predetermined period of time.**
- 2. To increase or decrease the amount of goods and/or level of services being provided at the same rate(s) and under the same terms of the original contract.**
- 3. To increase or decrease the total contract value based upon unit prices established in the original contract.**

Options are unilateral and they are initiated at the discretion of the state. For example:

A state agency enters into a state contract with a vendor to provide computer maintenance service for the current fiscal year. The contract may be extended by the state agency for two additional years, if the vendor performs satisfactorily. The state agency exercises its option for continued service for another year before the end of the current contract term at the prices agreed to in the original state contract.

A state agency enters into a state contract with a laboratory for 500 tests for water for bacteria levels at a specified rate for each test completed. The contract allows the state agency to increase the number of tests being performed to 1,000 or 1,500. The state agency exercises its option to have more tests performed by processing an option notifying the vendor that more tests are to be performed at the rate stated in the original state contract.

A state agency enters into a state contract with a vendor to provide trash removal services. The total maximum price in the contract is based upon a unit price charged for each dumpster to be emptied by the vendor on a schedule established the agency. The agency determines at a later date that the schedule needs to be changed so that they have the proper level of service for their needs. The agency exercises its option to increase or decrease the total maximum price in the contract based upon the new schedule.

STATE CONTROLLER POLICY

Requirements:

The following language must be included in the original contract to allow the option for extending services:

"The state may require continued performance for a period of ____ for any services at the rates and terms specified in the contract. The state may exercise the option by written notice to the contractor within ____ days prior to the end of the current contract term in a form substantially equivalent to Exhibit ____."

If the state exercises this option, the extended contract will be considered to include this option provision. The total duration of this contract, including the exercise of any options under this clause, shall not exceed ____."

The following language must be included in the original contract to allow the option for increased quantities:

"The state may increase the quantity of goods/services described in paragraph/schedule/exhibit at the unit prices established in the contract. The state may exercise the option by written notice to the contractor within ____ days before the option begins in a form substantially equivalent to Exhibit _____. Delivery/performance of the goods/service shall continue at the same rate and under the same terms as established in the contract."

The following language must be included in the original contract to allow for the option to increase or decrease the total contract price based upon a change in the service schedule established by the agency:

"The state may unilaterally increase/decrease the maximum amount payable under this contract based upon the unit prices established in the contract and the schedule of services required, as set by the state. The state may exercise the option by providing a fully executed option to the contractor, in a form substantially equivalent to Exhibit _____, immediately upon signature of the State Controller or his delegate. Performance of the service shall continue at the same rate and under the same terms as established in the contract."

An option to renew the term of the contract for another year(s) must be issued by the state agency prior to the ending date of the contract. Options for increases/decreases in goods/services (and the resulting increases/decreases in the total contract price) must be issued during the term of the contract.

Options require the same reviews, approvals, and signatures of the contracts they are modifying, except that they do not require a legal review by the Attorney General or designate.

OPTION LETTER

Exhibit _____

Date: _____ State Fiscal Year: _____ Option Letter No. _____

SUBJECT: *(Please indicate purpose by choosing one of the following)*

- 1 - Option to renew only (for an additional term)**
- 2 - Change in the amount of goods within current term**
- 3 - Change in amount of goods in conjunction with renewal for additional term**
- 4 - Level of service change within current term**
- 5 - Level of service change in conjunction with renewal for additional term**

In accordance with Paragraph(s) _____ of contract routing number (FY) (Agency) (Routing #), between the State of Colorado, Department of/or Higher Ed Institution (agency name), (division name), and (contractor's name) the state hereby exercises the option for an additional term of (include performance period here) at a cost/price specified in Paragraph/Section/Provision _____, AND/OR an increase/decrease in the amount of goods/services at the same rate(s) as specified in Paragraph/Schedule/Exhibit

The amount of the current Fiscal Year contract value is increased/decreased by (\$ amount of change) to a new contract value of (\$ _____) to satisfy services/goods ordered under the contract for the current fiscal year (indicate Fiscal Year). The first sentence in Paragraph/Section/Provision _____ is hereby modified accordingly.

The total contract value to include all previous amendments, option letters, etc. is (\$ _____).

APPROVALS:

State of Colorado:

Bill Owens, Governor

By: _____ Date: _____

Executive Director/College President]

Colorado Department of/or Higher Ed Institution _____

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**State Controller
Arthur L. Barnhart**

By: _____

Date: _____

Date Issued: February 10, 2003

STATE CONTROLLER POLICY

Change Order Letters

Purpose

Contract change order letters may be used for the following purposes:

- 1. To make changes to specifications within the statement of work.**
- 2. To increase or decrease the total contract value based on the level of service provided or goods ordered using the established unit prices in the original contract.**
- 3. To increase or decrease the contract term only when there are changes to the specifications or level of service that requires an adjustment in time of performance. Change order letters cannot be used to add an additional scope of work to a contract or to modify the original term of a contract where there are not accompanying changes to specifications within the current statement of work.**

Change order letters are bilateral. For example:

A state agency enters into a contract to purchase equipment specifically designed for the state. During the time the equipment is being built the state decides that there is an additional use for this equipment with a slight modification in the design. The state issues a change order letter for the modification to the equipment with an accompanying adjustment in time of performance and price for the change, if necessary.

A state agency enters into a contract to purchase services to write code for a computer operating system. During the design phase the state discovers that there is some off the shelf software that will work in conjunction with the operating system. The agency writes a change order letter to include the use of this purchased software as part of the system, reduces the amount of code to be written by the contractor, decreases the term of performance, and reduces the contract price accordingly.

A state agency enters into a state contract with a county health organization to perform medical testing on a specific number of county residents that is federally funded. The state agency determines that it wants to have more tests performed because of an increase in funding. The state agency issues a change order letter to increase the number of tests to be performed with an accompanying increase in the amount to be paid to the county health organization, and an extension of time to perform the tests, if necessary.

STATE CONTROLLER POLICY

Requirements:

The following language must be included in the original contract to allow the state agency to use change order letters to make changes to the specifications:

"Bilateral changes within the general scope of the contract, as defined in Paragraph ____ above, may be executed using the change order letter process described in this paragraph and a form substantially equivalent to the sample change order letter attached as Exhibit ____ for any of the following reasons.

- 1. Where the agreed changes to the specifications result in an adjustment to the price, delivery schedule, or time of performance.*
- 2. Where the agreed changes result in no adjustment to the price, delivery schedule, or time of performance. The change order shall contain a mutual release of claims for adjustment of price, schedules, or time of performance.*
- 3. Where the changes to the contract are priced based on the unit prices to be paid for the goods and/or services established in the contract or Attachment ____.*
- 4. Where the changes to the contract are priced equal to or less than established catalog generally extended to the public or on prices or rates set by law or regulation.*

Other bilateral modifications not within the terms of this paragraph must be executed by formal amendment to the contract, approved in accordance with state law."

Change order letters require the same reviews, approvals, and signatures of the contracts they are modifying, except that they do not require a legal review by the Attorney General or designate.

Change order letters must be processed during the term of the contract.

SAMPLE BILATERAL CHANGE ORDER LETTER

Exhibit _____

Date: _____ State Fiscal Year: _____ Bilateral Change Order Letter No. _____

In accordance with Paragraph _____ of contract routing number (FY) (Agency) (Routing #) between the State of Colorado Department of or Higher Ed Institution (agency name) (division) and (contractor's name) covering the period of (include performance period here) the undersigned agree that the supplies/services affected by this change letter are modified as follows:

Choice #1: Services/Supplies

Exhibit/Attachment _____, Schedule of Equipment for Maintenance or Schedule of Delivery, is amended by (adding/deleting) or (increasing/decreasing) the level of services. The term of this contract is hereby modified by (increasing/decreasing) the ending term date as appropriate to the change made above.

Choice #2: Price/Cost

The maximum amount payable by the State for (service/commodity) in Paragraph/Schedule/Exhibit/Attachment/Provision/Section _____ is (increased/decreased) by (\$ amount of change) to a new total of (\$____) based on the unit pricing schedule in Exhibit/Attachment _____. The first sentence in Paragraph _____ is hereby modified accordingly.

The total contract value to include all previous amendments, change orders, etc. is (\$_____).

Choice #3: No Cost Change

The parties agree that the changes made herein are "no cost" changes and shall not be the basis for claims for adjustment to price, cost ceiling, delivery schedule, or other terms or conditions of the contract. The parties waive and release each other from any claims or demands for adjustment to the contract, including but not limited to price, cost, and schedule, whether based on costs of changed work or direct or indirect impacts on unchanged work.

[Include this sentence]: The effective date of this change order is upon approval of the State Controller or (date), 20 __ whichever is later.

Please sign, date, and return all copies of this letter on or before _____ 20_____.

APPROVALS:

Contractor Name:

State of Colorado:

Bill Owens, Governor

By: _____

By: _____ Date: _____

Name _____

For the Executive Director/College President

Title _____

Colorado Department of/or Higher Ed Institution

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State Controller

Arthur L. Barnhart

By: _____

Date _____

Date Issued: February 10, 2003

STATE CONTROLLER POLICY

Task Orders

Purpose

Contract task orders are used to order supplies, materials, and/or services based on rates and terms that have been negotiated and agreed to in a master contract. As specific tasks are identified the parties agree on the statement of work and the maximum price through the issuance of a task order.

Task orders are bilateral. For example:

A state agency has entered into a master contract with the U S Forest Service to improve park trails within the state. Once a specific project is identified the Forest Service submits a proposal detailing the work and the total price for the work based upon the rates established in the master contract. If the U S Forest Service proposal is accurate and complete, a task order, similar to the task order attached as an exhibit to the master contract, would be executed for the work to be performed.

A state agency enters into a master contract with a company that flies helicopters to establish the rates for each hour of flight, landing fees, and the other necessary expenses for the use of the helicopter. The state agency identifies a need to perform an aerial survey by helicopter. The state agency contacts the contractor to determine the total cost of the flight based upon the established rates and issues a task order detailing the flight plans and the maximum amount payable for the service provided.

A state agency enters into a master contract with RTD to provide transportation services for the agency's employees. The master contract contains a provision that allows other state agencies to acquire the same services for their employees by executing just a task order to the original contract.

Requirements:

The following language must be included in the original contract to allow the state agency to issue task orders:

"Tasks will be defined, negotiated, and ordered by agreement of the parties based on the rates established in Appendix ____ and are subject to the same terms and conditions established in the contract. The contractor understands that there is no guaranteed minimum commitment by the state to issue task orders pursuant to this contract. Changes to terms, conditions, and prices specified, or other provisions of the contract shall be completed by formal amendment and signed by the State Controller or his designee. Task orders processed in accordance with this paragraph shall occur as follows:

If the state has need of services, and the contractor agrees to provide those services, the state shall provide a definition of the requirements to the contractor. The contractor will propose a price for the task using the rates agreed to and identified as Appendix ____ to the contract and attached to the contractor's proposal. The proposal shall include the estimated number of hours, material costs, and amount of other elements of cost priced by the parties in the rates established in Appendix ____, as well as the proposed time of performance, in a form acceptable to the state.

STATE CONTROLLER POLICY

Upon negotiation and agreement of the parties concerning the statement of work, the price, and the time of performance, the Task Order attached as Exhibit ____ to the contract shall be prepared and signed by both parties.

Performance of the work and payment for that work shall be governed by the standards and procedures set forth in this contract. Upon negotiation and acceptance of the task order, the contractor warrants that performance will be successfully completed within the time frame and price stated in the task order. The state's financial commitment stated in the task order shall not be considered valid until the State Controller or a delegate executes the task order."

Additional language:

This additional language is provided for those state agencies wishing to encumber all available funds when the master contract is executed.

"The cumulative not to exceed amount for all task orders issued pursuant to this contract shall not exceed _____. The state's financial obligation is limited by this amount, and the contractor shall accept no task orders, which result in a cumulative amount in excess of the not to exceed amount stated in this paragraph. Increases or decreases to the not to exceed amount shall be completed by formal amendment and signed by the State Controller or his designee."

Task orders require the same reviews, approvals, and signatures of the contracts they are modifying, except that they do not require a legal review by the Attorney General or designate.

Task orders must be processed during the term of the contract, but performance on a specific task order may end after the termination date of the contract.

SAMPLE TASK ORDER LETTER

Exhibit _____

Date: _____ State Fiscal Year: _____ Task Order Letter No. _____

In accordance with Paragraph _____ of contract routing number (FY) (*agency*) (*routing #*) between the State of Colorado Department of or Higher Ed Institution (*agency name*) (*division*) and (*contractor's name*) covering the period of (*contract start date*) through (*contract end date*) the undersigned agree that the supplies/services affected by this task order letter are modified as follows:

Task Order Description

The contractor shall perform the task in accordance with (*the following specifications/statement of work*) described in the contractor's task order proposal dated _____, as amended by amended task order proposal dated _____, both of which are hereby incorporated by reference.

Price/Cost

The maximum amount payable by the State for (*service/supply*) described above is (\$ ____). The total contract value to include all previous amendments, task orders, etc., is (\$ ____)

Performance Period

The contractor will complete the performance in this task order by _____.

This task order is executed pursuant to Paragraph _____ of the original contract. The parties agree that all work shall be performed according to the standards, procedures, and terms set forth in the original contract. In the event of any conflict or inconsistency between this amendment and the original contract, such conflict or inconsistency shall be resolved by reference to these documents in the following order: Special Provisions, original contract, attachments/exhibits to the original contract, this task order letter, attachments/exhibits to this task order letter.

The effective date of this task order is upon approval of the State Controller or (*date*), 20____, whichever is later.

Please sign, date, and return all copies of this letter on or before _____ 20____.

Contractor Name:

State of Colorado:

Bill Owens, Governor

By: _____
Name _____
Title _____

By: _____ Date: _____
For the Executive Director/College President
Colorado Department of _____ or Higher
Education Institution

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**State Controller,
Arthur L. Barnhart**

By: _____

Date: _____

STATE CONTROLLER POLICY

Funding Letters

Purpose

Contract funding letters are used to increase or decrease the funding provided by the state in federal or state grant type contracts wherein the state has little or no control over the scope of services being provided by the sub-grantee.

Funding letters are unilateral. For example:

The federal government provides funding to counties through an award or grant administered by the state. The award or the grant requires the counties to provide services outlined within the award or grant. A state agency enters into a contract with all of the counties in order to distribute these funds. During the year the federal government awards additional funds or reduces the amount of the original award. The state agency issues a funding letter to one or more of the counties to increase or decrease the specific amount of the funding to be provided to them.

A state agency has state funds that are to be distributed to qualifying entities to provide certain services to citizens of the state. One of the sub-grantees will not use all of the funds that they have been allocated and the state wishes to reallocate those funds to another sub-grantee. The state agency issues a funding letter decreasing the amount for one sub-grantee and issues another funding letter increasing the amount for the other sub-grantee.

Requirements:

The following language must be included in the original contract to allow the state agency to issue funding letters:

The state may allocate more or less funds available on this contract using a Funding Letter substantially equivalent to Exhibit ____ and bearing the approval of the State Controller or his designee. The funding letter shall not be deemed valid until it shall have been approved by the State Controller or his designee."

Funding letters require the same reviews, approvals, and signatures of the contracts they are modifying, except that they do not require a legal review by the Attorney General or designate.

Funding Letters must be processed during the term of the contract.

SAMPLE FUNDING LETTER

Exhibit _____

Date: _____ State Fiscal Year: _____

TO: (contractor's name here)

SUBJECT: Funding Letter No. _____

In accordance with Paragraph _____ of contract routing number _____, between the State of Colorado Department of or Higher Ed Institution (agency name) (division) and (contractor's name) covering the period of (contract start date) through (contract end date), the undersigned commits the following funds to the contract:

The amount of funds available and specified in Paragraph _____ is (increased/decreased) by (\$ amount of change) to a new total funds available of (\$ _____) to satisfy orders under the contract. Paragraph _____ is hereby modified accordingly.

This funding letter does not constitute an order for services under this contract.

This funding letter is effective upon approval by the State Controller or such assistant as he may designate.

APPROVALS:

State of Colorado:

Bill Owens, Governor

By: _____ Date: _____
For the Executive Director/College President
Colorado Department of _____ or Higher Ed institution _____

By: _____ Date: _____
For _____ (Division)

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State Controller
Arthur L. Barnhart

By: _____

Date: _____